

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CFLI LICENSE NO.: 603G787
)	
THE COMMISSIONER OF BUSINESS)	CONSENT ORDER
OVERSIGHT,)	
)	
Complainant,)	
)	
v.)	
)	
SANTANDER CONSUMER USA, INC. doing)	
business as HELPINGLOANS.COM,)	
ROADLOANS.COM,)	
)	
Respondent.)	

This Consent Order (Consent Order) is entered into between the Commissioner of Business Oversight (Commissioner) and Santander Consumer USA, Inc., doing business as Helpingloans.com and RoadLoans.com (Santander) (collectively, the Parties) and is made with respect to the following:

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RECITALS

A. The Commissioner as the chief officer of the Department of Business Oversight (Department) has jurisdiction over the licensing and regulation of persons and entities engaged in the business of finance lending under the California Financing Law (CFL) (Fin. Code, § 22000 *et seq.*) and the regulations promulgated under title 10 of the California Code of Regulations (CCR) (Cal. Code Regs., tit. 10, § 1404 *et seq.*).

B. The purpose of the CFL is to ensure an adequate supply of credit to borrowers in California; to simplify, clarify, and modernize the law governing loans made by finance lenders; to foster competition among finance lenders; to protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders; to permit and encourage the development of fair and economically sound lending practices; and to encourage and foster a sound economic climate in this state. (Fin. Code § 22001, subd. (a).)

C. Santander, a finance lender licensed by the Commissioner since December 23, 2008 (CFL License No. 603G787) is an Illinois corporation located at 8585 North Stemmons Freeway, Suite 110-N, Dallas, Texas 75247. Santander provides auto loans under its CFL license.

D. Scott Powell is the chief executive officer and a control person of Santander, and as such, is authorized to enter into this Consent Order on behalf of Santander.

E. The Commissioner, through her staff, commenced a regulatory examination of Santander on November 4, 2013, including follow-up inquiries, during the course of which the Department identified several alleged violations of the CFL. All such alleged violations were addressed by remedial action by Santander to the satisfaction of the Department, except for an alleged disclosure violation of Section 22161(d) and (f) of the CFL.

F. It is the intention and desire of the Department and Santander (each, a “Party,” and collectively, the “Parties”) to resolve this matter without the necessity of a hearing or other litigation.

G. The Commissioner finds that this action is appropriate, in the public interest, and consistent with the purposes fairly intended by the policy and provisions of this law.

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1 H. Without admitting or denying any of the factual matters and alleged violations set forth
2 herein, Santander wishes to address the concerns of the Department by agreeing to the terms of this
3 Consent Order.

4 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth
5 herein, the Parties agree as follows:

6 **TERMS AND CONDITIONS**

7 1. Purpose. It is the intention and desire of the Parties to resolve this matter without the
8 necessity of a hearing or other litigation for the purpose of judicial economy and expediency and to
9 avoid the expense of a hearing and possible further court proceedings.

10 2. Finality of Consent Order. Santander hereby agrees to comply with this Consent Order
11 and, further, stipulates that this Consent Order is hereby deemed a final and enforceable order issued
12 pursuant to the Commissioner's authority under Financial Code section 22712, subdivision (b).

13 3. Order to Discontinue Violations. Santander agrees to an order to discontinue the
14 violations of Section 22161(d) and (f) of the CFL. (Order to Discontinue). The Order to Discontinue
15 will be considered a final order pursuant to Financial Code section 22717.

16 4. Required Disclosures. For each direct auto loan originated by Santander, Santander
17 agrees to disclose to each borrower(s) as follows: (1) In the initial Truth in Lending letter, in bold
18 lettering, the following "YOUR AUTO DEALER PAID ROADLOANS A SEPARATE FEE. THE
19 FEE WAS NOT INCLUDED IN THE CALCULATION OF THE INTEREST RATE AND APR OF
20 YOUR LOAN." and (2) In the Loan Voucher, just above the signature line, in bold lettering, the
21 following "THE DEALER WILL BE REQUIRED TO PAY ROADLOANS A FEE."

22 5. Waiver of Hearing Rights. Santander acknowledges that the Commissioner is ready,
23 willing, and able to proceed with the enforcement action based on the facts contained in this Consent
24 Order, and Santander hereby waives the right to a hearing, and to any reconsideration, appeal, or
25 other right to review which may be afforded pursuant to the CFL. Santander further expressly
26 waives any requirement for the filing of an Accusation that may be afforded by Government Code
27 section 11415.60 (b), the California Administrative Procedure Act, the California Code of Civil
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1 Procedure, or any other provision of law; and by waiving such rights, Santander effectively consents
2 to this Consent Order becoming final.

3 6. Administrative Penalties. Santander agrees to pay administrative penalties in the
4 amount of \$ 300,000.00. Such payment shall be made by Santander within 10 days of the effective
5 date of this Consent Order, as such date is defined Paragraph 22, made payable in the form of a
6 cashier's check or Automated Clearing House deposit to the "Department of Business Oversight,"
7 and transmitted to the attention of Accounting – Enforcement Division, Department of Business
8 Oversight, 1515 K Street, Suite 200, Sacramento, California, 95814. Notice of all payments shall be
9 sent to Marlou de Luna, Senior Counsel, Department of Business Oversight, 320 West 4th Street,
10 Suite 750, Los Angeles, California 90013.

11 7. Declaration of Policies and Procedures. Santander has submitted to the Commissioner
12 a declaration under the penalty of perjury (Declaration) from an officer with personal knowledge of
13 Santander's policies and procedures that the requirements of Section 4 of this Consent Order have
14 been implemented. The Commissioner has reviewed the Declaration and deemed the subject
15 disclosure being implemented as satisfactory. Santander agrees to continue providing the disclosure
16 to its direct auto loan applicants in the future.

17 8. Effect of Consent Order on License. In consideration of Santander's agreement to the
18 entry of this Consent Order the Commissioner shall not take any further action based on the
19 violations cited in this Consent Order. Accordingly, this Consent Order does not affect the licensing
20 status of Santander.

21 9. Suspension of License for Failure to Comply with Consent Order. Santander agrees
22 that if it fails to comply with any terms of Sections 3 and 4 of this Consent Order, Santander shall be
23 immediately suspended from lending under its CFL license until all terms are met.

24 10. Full and Final Resolution. The Parties hereby acknowledge and agree that this Consent
25 Order is intended to constitute a full, final, and complete resolution of the Commissioner's
26 investigation of Santander, and for violations discovered during the regulatory examinations and
27 inquiries arising prior to the date of this Consent Order. No further proceedings or actions will be
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1 brought by the Commissioner in connection with this matter either under the CFLL, or any other
2 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
3 Consent Order, or action if such proceeding or action is based upon discovery of new and further
4 violations of the CFLL which do not form the basis for this Consent Order or which were knowingly
5 concealed from the Commissioner by Santander.

6 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest of either Party.

8 12. Commissioner's Duties. The Parties further acknowledge and agree that nothing
9 contained in this Consent Order shall operate to limit the Commissioner's ability to assist any other
10 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal, brought
11 by any such agency against Santander or any other person based upon any of the activities alleged in
12 these matters or otherwise. For purposes of clarity, the Parties agree that any examination materials,
13 including communications between the Department and Santander, shall be deemed confidential and
14 subject to the Department's supervisory privilege and privileges held by Santander.

15 13. Third Party Actions. It is the intent and understanding between the Parties that this
16 Consent Order does not create any private rights or remedies against Santander, create any liability
17 for Santander or limit defenses of Santander for any person or entity not a Party to this Consent
18 Order.

19 14. Future Actions by Commissioner. This Consent Order may be revoked and the
20 Commissioner may pursue any and all remedies available under law against Santander if the
21 Commissioner later discovers that Santander knowingly or willfully withheld information used for
22 and relied upon in this Consent Order. Further, Santander agrees that this Consent Order does not
23 resolve any penalties that may be assessed by the Commissioner upon discovery of new and further
24 violations of the CFL.

25 15. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it
26 has received independent advice from its attorney(s) and/or representatives with respect to the
27 advisability of executing this Consent Order.
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1 16. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
2 Consent Order shall not operate to waive any other provision set forth herein. No waiver,
3 amendment, or modification of this Consent Order shall be valid or binding to any extent unless it is
4 in writing and signed by each of the Parties.

5 17. Headings. The headings in this Consent Order are for convenience only and do not
6 affect its meaning.

7 18. Governing Law. This Consent Order will be governed by and construed and enforced
8 in accordance with the laws of the State of California.

9 19. Counterparts. The Parties agree that this Consent Order may be executed in one or
10 more separate counterparts, each of which when so executed, shall be deemed an original. Such
11 counterparts shall together constitute and be one and the same instrument.

12 20. Full Integration. Each of the Parties represents, warrants, and agrees that in executing
13 this Consent Order it has relied solely on the statements set forth herein and the advice of its own
14 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
15 Order it has placed no reliance on any statement, representation, or promise of any other party, or any
16 other person or entity not expressly set forth herein, or upon the failure of any Party or any other
17 person or entity to make any statement, representation or disclosure of anything whatsoever. The
18 Parties have included this clause: (1) to preclude any claim that any Party was in any way
19 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parole
20 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

21 21. No Presumption Against Drafting Party. In that the Parties have had the opportunity to
22 draft, review and edit the language of this Consent Order, no presumption for or against any Party
23 arising out of drafting all or any part of this Consent Order will be applied in any action relating to,
24 connected to, or involving this Consent Order. Accordingly, the Parties waive the benefit of Civil
25 Code section 1654 and any successor or amended statute, providing that in cases of uncertainty,
26 language of a contract should be interpreted most strongly against the Party who caused the
27 uncertainty to exist.
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22. Voluntary Agreement. Santander enters into this Consent Order voluntarily and without coercion and acknowledges that no promises, threats or assurances have been made by the Commissioner or any officer, or agent thereof, about this Consent Order.

23. Effective Date. This Consent Order shall not become effective until signed by all Parties and delivered by the Commissioner's counsel by email to Santander's chief executive officer at coporate.secretary@santanderconsumerusa.com.

24. Notice. Any notices required under this Consent Order shall be provided to each Party by Federal Express or similar delivery mechanism, return receipt requested, at the following addresses:

If to Santander: Santander Consumer USA, Inc.
8585 North Stemmons Freeway
Suite 1100-N
Dallas, Texas 75247\
Attention:

If to the Commissioner: Marlou de Luna, Senior Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013

25. Public Record. The Parties agree that this Consent Order shall be deemed to be a public record.

26. Authority to Execute. Each signatory hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Consent Order.

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1 IN WITNESS WHEREOF, the Parties hereto have approved and executed this Stipulation on
2 the dates set forth opposite their respective signatures.

3 Dated: 4/6/18 JAN LYNN OWEN
4 Commissioner of Business Oversight

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6 By _____
7 MARY ANN SMITH
8 Deputy Commissioner
9 Enforcement Division

10 Dated: 4/5/18 SANTANDER CONSUMER USA, INC.

11
12 By _____
13 SCOTT POWELL
14 Chief Executive Officer

15 Approved as to Form and Content

16
17
18 By _____
19 Joseph T. Lynyak III
20 Dorsey & Whitney LLP
21 Counsel for Santander Consumer USA, Inc.
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